

**Virginia Commission on Immigration
DRAFT - MEETING MINUTES**

January 4, 2008

Senate Room A
General Assembly Building
900 East Broad Street, Richmond, Virginia

CALL TO ORDER: The January meeting of the Virginia Immigration Commission was called to order at 10:16 a.m.

PRESIDING: Senator Watkins

MEMBERS PRESENT: Dr. Rajul Malik, Ms. Wanda Hamilton, Mr. George Foresman, Reverend Gerry Creedon, Delegate Jackson H. Miller, Delegate C. Todd Gilbert, Senator John C. Watkins, Dr. Venita Newby-Owens, Mr. Charles T. Griffith, Mayor Pranas A. Rimekis, Delegate Robert G. Marshall, Secretary Marilyn Tavenner

MEMBERS ABSENT: Delegate Roslyn C. Tyler, Senator Jay O'Brien, Senator Richard L. Saslaw, Mr. Satya Akula, Delegate Dwight C. Jones, Mr. Eliot Norman, Captain Eddie Reyes, Ms. Carmen Alicia Bernal,

STAFF PRESENT: Matt Gross, Virginia Department of Social Services Policy Analyst
Heidi Dix, Assistant Deputy Secretary of Health & Human Resources
Margaret Schultze, Virginia Department of Social Services Assistant Commissioner
Sindy Benavides, Director of Gubernatorial Appointments & Latino Liaison

PRESENTATIONS: **Presenter #1: James Towey, Virginia State Crime Commission**
"Overview & Recommendations of the Illegal Immigration Task Force"
Please review presentation handout for presentation details.

Presentation Discussion:

(Foresman) On the issue of preemption, are you aware of what Arizona is doing for documentation (Towey) what Arizona has done is focused on licensing, there is a limited exceptions to the expressed preemption under federal employment that allows states to enact legislation with regard to licensing. States cannot enact criminal penalties or sanctions against businesses who hire illegal immigrants. Any criminal penalty or sanction is preempted. There is a limited exception for business licensees. (Foresman) Can you take a look at what Arizona has done and give your opinion? (Towey) Probably 20-25% of the final report will focus on the legal issues, but in response to your request, we can come up with a concise memo that cites the Arizona provisions and do our preemption analysis to it.

(Malik) The slide that refers to the three part test (Decants test, can you describe it. (Towey) The first type is described above with the example involving criminal penalties against businesses. Field preemption is when the Federal government has occupied a field in a certain area. One example is where the Federal government has created a criminal penalty for people who enter the US without authorization and an administrative penalty for people who overstay visas. The federal government has spoken on that issue. There was a bill last year to make being in Virginia illegally a class one misdemeanor. This raised the consequence over and above what the federal government does. Conflict preemption is doing something that conflicts with what exists under federal law, the above also exemplifies conflict preemption. (Marshall) Some people are not taking these offenses seriously. Aren't these things explained in the DMV manuals? (Towey) I can tell you that when we did an analysis of proxy illegal immigrants in Virginia jails and prisons it was clear that some of the most frequently committed offences dealt with public drunkenness, driving under the influence (DUI) and false documents. For example, the Richmond Police Department said they try and inform all immigrant communities to not use a fake identification. These crimes seem to be most prevalent because in the countries they come from, these crimes aren't viewed as being as significant as they are here in Virginia, so this is new to them and may be one of the reasons why. (Marshall) What you are suggesting is that in the countries these people are coming from, false identification is like reading a newspaper and lying to public officials is the norm? (Towey) That was not my intent. (Watkins) I know what you're questions are about, I don't think they he can answer the questions you are asking. (Marshall) Are you saying most illegal immigrants in jail for not using a car seat? (Towey) What we saw from a lot of the jail statistics, the most common offenses are DUI, drunk in public, and fraud for fake identification. It is often a crime incidental to illegal status, such as speeding, but they go to jail because they present false identification. Car seats are not a main offence causing this. (Foresman) Given the fact that we will get the report, can we focus on the three specific referrals to this commission? (Towey) **NOTE: Get report.**

Presenter #2: Qian Cai, Weldon Cooper Center for Public Service

“Hispanic Immigrants and Citizens in Virginia”

Please review presentation handout for presentation details

Presentation Discussion:

(Marshall) Hispanic immigrants are eligible to be in the military?

(Cai) Yes, those who are here legally. (Marshall) I understand citizens in the military, but can you be in the military and not be a citizen?

(Miller) To answer Delegate Marshall, you don't even have

to be a documented immigrant to join the armed forces. **NOTE:**
Other countries question. (Creedon) What causes the household size? Is it family size, economic factors, cultures? (Cai) It certainly comes from culture as people from other countries often have larger and more extended families. Also, typically when immigrants arrive they pool resources by sharing housing and cars. (Creedon) Is that why household income is higher than would be expected? (Cai) Yes, because everyone contributed to the household. (Foresman) Thank you. That was a great population. Can we get the statistical data for other immigrant communities, such as Asian? (Cai) Not yet, because this is the first request of this issue. (Watkins) I was amazed by the last data you presented. I think it would be extremely helpful to get a similar report for the Asian community. That would cover 76% of the immigrant population in VA. These statistics are very interesting in regards to education. We are a country of immigrants, and that desire to thrive shows, in how the Hispanic population is more educated than Virginia as a whole, it shows how hard people work to be successful.

Presentation #3: Robert Redmond, Jr., Virginia Employers for Sensible Immigration Policy, Hobey Bauhan, Virginia Employers for Sensible Immigration Policy

“Virginia Employers for Sensible Immigration Policy”

Please review presentation handout for presentation details.

Presentation Discussion:

(Marshall) You're an attorney. You certainly have read the decisions before 1986 saying states can have statutes before this date regarding immigration. How can you say this is just a federal role when it is used to be dual? (Redmond) I would agree with Mr. Towey because of what the crime commission studied, federal law is preemptive. (Marshall) You said it is better left to the United States Government, before 1986 clearly the states had power. (Redmond) I agree with the Crime Commission analysis. (Marshall) I don't think it's unconstitutional in Virginia or California. I've read the decision. I disagree with the statement that the Constitution only allows the federal government to regulate immigration. (Redmond) It is preempted. (Marshall) In 1986. (Redmond) If it was preempted in 1986 it is preempted now. (Miller) I am stunned by your second core principle (**get from notebook**). This goes against everything I have tried to tell my constituents. They say that the immigration problem is because businesses just want to hire illegal immigrants. I tell them the business community wants us to hire legal immigrants. I worked to quell their rhetoric, now the business community says to suspend licenses is bad for the Commonwealth. That angers me (Redmond) We agree with the Crime Commission analysis that enforcement is a federal issue and should be done by the federal

government. (Miller) Preemption keeps us from fining or jailing people because of hiring illegal immigrants. We can suspend licenses. You are saying that doing something that isn't preempted should be done. How is it not fair to not punish people who hire illegal immigrants? (Redmond) Enforcement is a federal issue. Adding new bureaucracy that is not necessary will make Virginia lose its number one ranking for business. (Gilbert) I am not following. If your goal is to keep making money and doing business, why don't you just say this? If it costs money and cuts profits, you will not support a change in policy? (Redmond) No, our goal is to keep Virginia the number one place to do business. We are number one because of our current regulatory environment. (Gilbert) You do not want to fix the law because it will hurt business? (Redmond) We agree that it is a federal responsibility to enforce these laws and not Virginia businesses responsibility to enforce them. We do comply with them. (Gilbert) Does your broad coalition see that there are lots of illegal aliens in Virginia? Do you agree that they are here for a reason, and that is to work? (Redmond) Yes. (Gilbert) You represent a broad group of industries; do you agree that illegal aliens are working in those industries? (Redmond) We are certain that illegal immigrants are employed in every part of the Commonwealth. (Gilbert) Is that good or bad? (Redmond) We strive for legal employment of legal aliens. (Gilbert) Why are you telling us we should not do anything about business hiring illegal immigrants? (Watkins) If we are going to ask questions that will be argumentative, they will be asked through the chairman. (Gilbert) I am just asking him to give a simple answer to a simple question. (Watkins) This commission is here because they are not simple answers. We need to let the gentleman finish his presentation, and we need to be consistent in how we ask questions so we are not arguing with our presenters. (Marshall) If staying number one is the result of say 10% of the employers been illegal, would you want to be number one under those circumstances? (Redmond) I do not understand. (Marshall) Do you want to be number one because of violations of federal law? (Redmond) We want to be number one because of our regulatory environment. We ask the commission to carefully weight the tangible economic benefits to see if they outweigh the costs. We need to know the costs versus the benefits. (Marshall) I want to note for the record that the gentleman did not answer the question. In 2006 I introduced House Bill 185. It stated that no public body will enter into a contract with a private entity unless the contract states that only U.S. citizens, legal resident aliens, or people with a valid visa will work on the job. Also, the bill required businesses to put up signs in Spanish that state they only hire legal employees. When I put this bill in, the people who you indicated in here, came crashing down upon me like this was a massive imposition. I used to be in a labor union and on worksites, why do your organizations oppose this idea? (Redmond) I do not

know. VESIP was created recently, I cannot speak to that.

(Marshall) I'm asking that you accept that all we want your employers to do is post signs that say you cannot hire people who are here illegally (Redmond) I do not understand the problem.

(Marshall) Your groups already bear the burden of IRS code because you have to be responsible for Social Security, Workman's Compensation, etc.. Why do you want to keep your businesses from complying with immigration laws? (Redmond) Enforcement is the executive branch's. We do not pursue actions against our employees. We comply with federal immigration, but we do not enforce.

(Marshall) When you receive an order for a court to pull money for child support, you are a part of the law enforcement, so you are part of this in these other areas, so I do not see why you object doing this for immigration. (Redmond) It is not enforcement, it is compliance. We comply with the court orders, we do not enforce them. (Watkins) As someone who runs a small business and works hard to comply, the I-9 is the compliance with the federal government. Ten to fifteen years ago, if you filled out the I-9, you might not hear anything from the Federal Government for six months. Then they tell you to fire the people. That is all you can do. (Miller) You think the "bad employers" should be punished, but you say you do not want regulations that hurt businesses in your mission. Do you want there to be no legislation from the General Assembly this year that applies to immigration and business? (Bauhan) We would like to have a seat at the table to discuss bills. (Miller) But you do not have any actual idea? Most advocacy groups do. (Bauhan) We do not have at this point a proactive bill to address bad employers who knowingly and willfully hire illegal immigrants. We are good actors and we feel like this issue should be left to the Federal Government. We think the General Assembly needs to work with the Virginia Delegation to fix it federally. (Miller) People I know in my district who are members of these trade associations want there to be suspension of business licenses for people who knowingly hire illegal aliens. (Bauhan) I would not use Arizona's law as a model. Depending on how it is defined and set up, a law of this nature can be draconian and have significant economic questions. We are not for illegal immigration. We do not want the state to hurt its number one business ranking through a burdensome regulatory environment. (Miller) I want to find solutions, and the line of questioning may seem that way, but your core principles seem to be the opposite. Your organization should sit down with me and we will come up with something that will punish the bad businesses and not hurt good ones. (Bauhan) We appreciate your feedback, and we would like to work with you during the General Assembly session. (Watkins) I think what Delegate Miller asked of you is, why doesn't someone from VESIP arrange an appointment with his office. (Gilbert) There is a problem here. I am assuming that problem is there are folks in the United State and Virginia who are illegal. Would you agree that

is that the nature of the problem? (Bauhan) Yes. (Gilbert) You say you do not have any recommendations on how to fix this on the state level, is that a correct summary? (Bauhan) We do not have a recommendation, but we would like to work with you. (Gilbert) Is it safe to say you are opposed to all ideas that have already been proposed? (Bauhan) We are concerned about suspending business licenses and how that is crafted, or how it will hurt employers who try to do the right thing. (Gilbert) I am not trying to impugn your industry, but despite your best efforts, there are people working illegally. Do you have any proposals on how to fix this problem at the federal level? We pass that along to the Virginia Delegation. (Bauhan) My industry has participated in e-verify since it began in order to make sure we only have properly documented people in our workforce. However, the federal system is set up so there can be documentation fraud. People are doing the best they can to comply. Surely there are practical solutions at the federal level to improve the e-verify system. (Gilbert) Delegate Marshall posed a hypothetical where 1% of the workforce is working illegally. He asked if you would accept that, and you said if the benefits outweigh the costs. If they do, would you accept that 1% who are illegal? (Redmond) If the economic benefits outweigh the costs, then yes. (Gilbert) So if they outweigh the costs, you would accept 1% slipping through the cracks? (Bauhan) Delegate Gilbert, I represent employers in the Commonwealth, and the answer is no. We strive to comply with federal law. There is such thing as bad law. (Gilbert) What flaw is that, our sovereignty? (Bauhan) Everything has flaws. The employment verification system is flawed and border security is flawed, but we have to comply with those flawed systems. (Foresman) To follow up with the Delegates, I want to caution all of us, we complain about the absence of federal leadership which is true, but the simple fact is at some point in the next 2-3 years there will be a reform. I think there is a responsibility of the business community. In order to keep the number one ranking, we need to start working today to be ready to comply. I do not want to be so reliant on the illegal immigrant community so when enforcement increases we are in trouble. I encourage you all to say what are the acceptable steps we can take for Virginia to reduce the business community's reliance on illegal workers to fill the workforce. We need a willingness to find solutions to the problems that illegal immigrants are hired. Where you do not have recommendations today, I think you need to take up the legislators on their offers to sit down and figure out how to make a level playing field. The state that gets in front of immigration enforcement is the one that will still be on top in 5 or 10 years when enforcement is taken to the next level. (Marshall) I am looking at the four core principles, and you talk about if the Commonwealth is going to enforce immigration laws, it is anti business. I have a roofer in Northern Virginia who goes through the situation the chairman described. He is suffering

from unfair business competition because other roofers are hiring illegal workers under the table. Why are you silent about the unfair affect on people who are hiring illegals? (Redmond) We are in favor of legal immigration. We do not want to have a regulatory environment that makes it difficult for all employers because of the wrongful acts of a few. (Marshall) For the record, he did not answer my questions again. You talk about costs/benefits again. Cost/benefit analysis to whom? Business or to public who pays for English as a Second Language instructors, emergency rooms, wrecked cars because of no insurance. What costs and benefits? (Redmond) We need to look at the Commonwealth as a whole, what business make, to taxes paid, to services rendered. Everything you said and we contribute to the economy. (Marshall) If it is the case that it costs more, will you be in the fore-front to make changes. (Redmond) If the benefits are outweighed by the costs we are in favor of it. (Marshall) Mr. Bauhan said the current system is not working. Your principles say the federal government should enforce it. Will you support an effort that says if congress can not marshal resources to enforce immigration laws, maybe they should give some back to the stare, would you support that? (Bauhan) I believe that it is a federal issue and needs to be fixed at that level. Not to say there is no role for states, but it is primarily federal. (Marshall) If they say they do not have the resources to do it, why would not you say as prior to 1986, we can give the states power again. (Bauhan) Again, we would like to have a discussion with you about solutions in Virginia. (Marshall) Would you consider it burdensome to post in Spanish a sign that says "You may not work here in volition of federal law." Would you oppose that as a statue for VA to pass to say you cannot violate a federal law? (Bauhan) I personally do not see an issue, but I would have to ask my members. (Watkins) I have some of the same concerns you do, but we all pay federal taxes, and there is an assumption that they will do certain things. If the work comes to the states, I want to know who will pay for that. Any legislation that created should have the Woodrum Amendment in there in terms of the cost to make sure the citizens want to pay for it through their state taxes. Do you want to raise taxes to do that? I do not. (Griffith) I would like to see us answer, how many illegal immigrants do we have in Virginia? The cost to get rid of them, and if they are gone, what are the costs and benefits? Do we now have jobs we cannot fill? (Watkins) We need feedback from you (VESIP) folks as to what Congress should do, and we need to know what are the implications and costs. Businesses can calculate that better than the government. (Bauhan) We have industries which rely on having an adequate supply of legal immigrant workers. (Miller) I want to thank Mr. Griffith, and he has asked what Delegate Gilbert was trying to ask. Mr. Griffith insinuated that we should not risk people of the trade-off as it will hurt the economy. (Griffith) To continue growing our businesses, we need to figure out how to fill the need

that is filled by illegals to be filled by legals. Businesses cannot seem to find people with graduate degrees. At Smithfield we have someone from William & Mary who could not get a visa because of the lottery. She can use a student visa for 10 months, but she has to leave, and then reapply. We have a need for immigrant labor at all levels, and we need to figure out how to legally fill those jobs. If we follow the federal laws, we will still have people who beat the system. I cannot walk on the work floor and say who is legal and illegal. If you start doing that you start running afoul of civil rights laws. We already run between what ICE and Dept of Justice says we have to do, and now we may have an additional law from Virginia. Everyone is not on the same page and business is caught in the middle. To do what ICE wants we violate civil rights. I do not care if the state or feds enforce it, but I want to have an adequate job force to pull from to grow our business. We are not representing businesses looking for day workers. We are talking about employers who have gone through I-9 and e-verify. Social Security is withdrawn and taxes are paid, and the wages are the same across the board. (Miller) Mr. Griffith, as we have spoken privately, I agree with you on the problems we have. I wish the federal government would quadruple the work visas, but I want to enforce the laws vigorously and want the Commonwealth to enforce the laws. (Griffith) I do not know if it will, but I would like to see a study that addresses that issue. (Miller) We would not have to get rid of them, our laws will make them leave. (Marshall) This manpower shortage might not be there if it were not for Roe v. Wade. (Hamilton) Federal government has not done what it needs to do, but when we start changing the responsibility, we need to know where the time, personnel, and money will come from. No one seems to be doing a cost analysis on this issue. We need to look at where we want to be in three years, not just one year. It would be nice if we had no illegal immigrants in the state, and most people are trying to abide by the law, but who will help us with that responsibility. (Watkins) I couldn't agree with you more. I think the conversation has been helpful. We will see something involving cost in the crime commission report. Also, if you let the market system loose in this thing, you will find that people in small business do not like having competition that is illegal. Agriculture has had this problem, and one of the biggest busts was in Maryland because a competitor turned someone in. (Creedon) Much of our discussion dealt with enforcement and the potential it to be more far-reaching. When law is flawed, enforcement is flawed.

Presentation #4: Mark Flynn, Virginia Municipal League, Mike Edwards, Virginia Association of Counties.

“Local Governments Response to Immigration Actions Survey”
Please review presentation handout for presentation details.

Presentation Discussion:

(Marshall) You have on Fairfax County on page 5, \$1.5 million for detention, what exactly does that consist of, just detaining? (Flynn) I will get that information for you.

Presentation #5: Jack Roberts, Local Government Attorneys of Virginia, Ross G. Horton, Local Government Attorneys of Virginia

“Selected Legal Issues for Local Government Attorneys Related to Immigration Status”

Please review presentation handout for presentation details.

Presentation Discussion:

(Marshall) I urged the board yesterday to look at the letter form Stephanie Hamlett, you are saying they read it again, and the request exceeded that ceiling? (Roberts) Even if we had that authority from the Dillon Rule, it would be federally preempted. (Marshall) Is it fair to say that there was a desire to do something, but the preemption kept you from doing so? (Roberts) Yes.

(Watkins) Is there an on point opinion from the Attorney General?

(Horton) I believe that was expressed in an October opinion.

(Marshall) So there is criminal warrant, administrative warrant, and an administrative warrant to appear for a hearing. (Horton) If they do not appear for a deportation hearing, we believe they will probably not appear to answer the summons the police officer stopped them for. (Marshall) How long does it take to contact NCIC (Horton) It will depend on getting the data from NCIC on the scene. It can be 3-5 minutes. The problems are with more unusual inquiries. In that case you call the **lasic**? It is supposed to be quick, but it often is not.

We are asking a young officer to make a decision at night. If they do not have the authority, we tell officers to not arrest. (Marshall) What does NCIC stand for, do you take numbers on how many people are checked? (Horton) We are just training now, and starting this in the next few weeks. (Watkins) You have to keep in mind that you often have a young officer in the middle of the night with this individual or group of individuals and their main concern is safety. (Marshall)

What does NCIS stand for? (Hammond) It stands for the National Criminal Information Center which is run by Federal Government, probably the FBI. (Marshall) Even though the jail is for Prince William, Manassas, and Manassas Park, you need three agreements?

(Hammond) Even though there is one jail, ICE wants an agreement with each locality. (Marshall) How many people who identify the jail are here illegally? (Horton) It has ranged as high as twenty percent.

(Malik) I heard a report regarding pro-active agencies taking classes on how illegal immigrants are evading the law. Family members who harbor immigrants on their premises are not punished if caught.

(Horton) We have not addressed it directly, harboring is a federal

issue. There is an underground economy that people survive it, but we do the best with what we can. (Marshall) Is Prince William more concerned with civil rights violations because of the advocacy groups. Have you been more apprehensive because of the immigrant watchdog groups? You were sued and beat them. (Horton) We are always concerned with getting sued. Will the advocacy groups deter the police departments from doing their jobs? No. We must have adequate training for officers. (Creedon) It would be helpful to me to figure out what the difference of responsibility is for the PW police as opposed to the Arlington Police. (Horton) As a practical matter, the responsibility and response on the street are the same. Arlington does work with ICE on the anti-gang workforce. The police department will not do sweeps, they will just look for the illegal alien who commits a crime. (Rimenkis) What would that procedure be? (Horton) The current procedure is based on the totality of the circumstances based on the officer's judgment. This will require as a matter of policy that if you have probable cause to think someone is here illegally, you will make the enquiry. (Rimenkis) What is that inquiry (Horton) looking at databases, NCIC, ect. It is not a significant change, we are just making it mandatory. (Newby-Owens) Does the locally have a responsibility with individuals who go over the boarder, bring people back to this country, act at their guardian, and bring them to services. Can you sanction the individuals who do this? (Horton) there is certainly federal law for that. If we become aware of someone who is doing that, we will inform ICE. (Newby-Owens) Is this reported to the local authority? (Horton) If this is reported to us, we report it to ICE and FBI. It usually relates to human trafficking.

MINUTES: (Watkins) Are there any corrections or additions for the December 13th minutes? (Foresman) I move to approve the minutes. (Saslaw) I second. (Watkins) The December minutes are approved.

NEXT MEETINGS: (Watkins) I want to commend that this is the first meeting that everyone has made a question, comment, or inquiry, and I think that will lead to our ability to do something tangible and productive for Virginia. Our next meeting will be on April 1.

ADJOURN: 1:31 PM